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Human rights of migrants

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, submitted in accordance with Human Rights Council decision 1/102 in which the Council decided to extend, exceptionally for one year, the mandates and the mandate holders of the special procedures of the Commission on Human Rights.

* A/61/150.
** The present report was submitted after the deadline in order to incorporate recent information.

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Report of the Special Rapporteur on the human rights of migrants

Summary

The present report contains an update on the work of the Special Rapporteur on the human rights of migrants since his last report to the General Assembly (A/60/357) and his report to the Commission on Human Rights (E/CN.4/2006/73 and Add.1 and 2). It focuses particularly on the issues raised by the Special Rapporteur in the context of the General Assembly's High-level Dialogue on International Migration and Development.

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I. Introduction

1. The present report is the fifth to be submitted to the General Assembly by the mandate of the Special Rapporteur on the human rights of migrants and the second presented by the present Special Rapporteur, Jorge Bustamante.

2. This report covers the activities carried out during the period 1 August 2005 to 30 August 2006. It contains a detailed description of the concerns presented by the Special Rapporteur to the General Assembly's High-level Dialogue on International Migration and Development. The report also describes certain significant developments in relation to the protection of the human rights of migrants that have occurred during the period under review.

Ii. Mandate

3. The activities of the Special Rapporteur are carried out in accordance with Commission on Human Rights resolution 1999/44, in which the Commission established the mechanism and defined its functions. At its sixty-second session, the Commission decided, by its resolution 2005/47, to extend the Special Rapporteur's mandate for a further three years. The Human Rights Council, in decision 1/102 extended the mandate for one year.

4. The international legal framework for the Special Rapporteur's work and the methods of work were reviewed in this year's report to the Commission on Human Rights (E/CN.4/2006/73 and Add.1 and 2) and were largely based on the work carried out by the previous Special Rapporteur, Gabriela Rodríguez Pizarro (see E/CN.4/2001/83 and Add.1 and A/57/292).

III. Activities

A. Summary of activities

5. The report submitted by the Special Rapporteur to the Commission on Human Rights contains a summary of meetings and activities in which the Special Rapporteur participated from August to December 2005. During the period not covered by that report, the Special Rapporteur took part in the following events:

(a) On 1 June 2006 he gave the keynote speech at the General Assembly of the Parliamentarian Confederation of the Americas — (COPA VII), which took place in Quito;

(b) On 27 June 2006 he participated in a workshop entitled "Workshop on Migration and Human Rights" organized by the United Nations Institute for Training and Research (UNITAR), the United Nations Population Fund (UNFPA) and the International Organization for Migration (IOM), which took place in New York;

(c) On 18 and 19 July 2006, he participated in a meeting in Madrid entitled "Encounter on Migration and Development" organized by CEPAL/CELADE in preparation for the Ibero-America summit of heads of State in Montevideo to take place in 2007;

(d) From 23 to 27 July 2006, he participated in a meeting in Jakarta organized by the Asia Pacific Forum on Women, Law and Development on migrant women in domestic service and their vulnerability as subjects of human rights.

B. Observations

1. Visits

6. Since his appointment to the mandate in July 2005, the Special Rapporteur has requested invitations to visit the following countries: Australia, Japan, Indonesia, Malaysia, Republic of Korea and South Africa. In view of the numerous reports received this year of the mass displacement of persons by boat and the deaths at sea of migrants, generally Africans of Sub-Saharan origin attempting to reach Europe, he has also requested a visit to Mauritania and a follow-up visit to Spain, in particular to the Canary Islands. Other follow-up visits were requested to Canada, the Philippines and the United States of America.

7. Australia, the Republic of Korea, South Africa and the United States of America have responded positively to the Special Rapporteur's request. A visit to the Republic of Korea is scheduled to take place from 4 to 12 December 2006. The dates of the other visits are currently under discussion.

8. The Special Rapporteur would like to thank the Governments of the countries that have responded positively to his requests for visits and to urge the Governments that have not yet done so to reply to his requests. He would like to observe that visits provide his mandate with a unique opportunity to directly assess the situation in the countries concerned and to meet with the different stakeholders on issues relevant to the mandate.

2. Case studies

9. In its resolution 2005/47 the Commission on Human Rights requested the Special Rapporteur to include in annual reports "a chapter on the impact of the legislation and the measures adopted by some States that restrict the human rights and fundamental freedoms of migrants". In his 2006 report (E/CN.4/2006/73, para. 78), the Special Rapporteur noted that because of his recent appointment he had not had the time to address the issue, but that he would do so in next year's report.

10. After due consideration of the Commission's request, the Special Rapporteur decided to solicit information through a questionnaire focusing on a few targeted issues regarding gaps or inadequacies in legislation which, according to reports received, can have a negative impact on migrants. He is currently awaiting responses to the questionnaire and hopes to present a study on this issue in his next report to the Human Rights Council.

3. Cases of violations of human rights of migrants

11. During the period under review, the Special Rapporteur continued to receive complaints of alleged violations of the human rights of migrants. Addendum 1 to his last report to the Commission includes the texts of complaints sent to Governments between January and December 2005, as well as replies received. The

communications sent and received since then will be summarized in his report to the Council.

12. In accordance with the working methods adopted, the complaints received were transmitted to the Governments concerned as urgent appeals or letters of allegation. The situations in which violations of the human rights of this group are alleged to have occurred during the period under review, giving rise to the intervention of the Special Rapporteur, include allegations of: (a) arbitrary detention, including of children; (b) inhumane conditions or detention; (c) ill-treatment in the context of border control; (d) deaths as a result of the excessive use of force by members of the police and security forces; (e) collective deportations, summary expulsions and violations of the human rights of deported persons; (f) impunity for crimes committed against immigrants; and (g) gender violence.

13. In his communications to Governments, the Special Rapporteur has also expressed concern at a number of situations involving violations of the human rights of migrant workers, including: (a) abusive working conditions imposed by employers, sometimes under conditions similar to slavery or forced labour; (b) withholding of passports; (c) non-payment of wages; (d) restrictions on freedom of movement, verbal and physical abuse and precarious conditions in housing that employers may be required to provide; (e) denial of the right of association and assembly; and (f) abuses by migrant worker recruitment agencies resulting from inadequate regulation of the sector.

14. Through the letters of allegation procedure, the Special Rapporteur has requested certain Governments to supply information on laws and measures applicable to migrants and on bilateral agreements for hiring migrant workers directly from their country of origin. As in the past, the purpose of these communications is to verify respect for minimum standards of protection of the human rights of this vulnerable group.

15. During the period under review, communications were sent jointly by the Special Rapporteur and by the following special procedures: the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the question of torture; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the sale of children, child prostitution and child pornography; the Special Rapporteur on trafficking in persons, especially women and children; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

16. The Special Rapporteur is now preparing his next report to the Human Rights Council. As noted above, in that report he will examine the issue of legislation and other measures affecting migrants.

IV. Human rights of migrants: developments during the period 2005-2006

17. The Special Rapporteur would like to draw attention to a number of developments that occurred during 2005 and 2006.

18. Throughout the whole of 2006, numerous meetings and events have taken place in preparation for the General Assembly's High-level Dialogue on International Migration and Development, including a number of panel events and informal interactive hearings with non-governmental organizations (NGOs), members of civil society and the private sector. On 18 May 2006, The Secretary-General has issued a comprehensive report in preparation for the Dialogue (A/60/871). These events and initiatives have been extremely important in raising public awareness regarding the many issues that can affect migrants, and regardless of the form that follow-up to the Dialogue will take, should have a positive impact on questions relating to the mandate.

19. Furthermore, in early 2006, and with the encouragement of the Secretary-General, membership in the Geneva Migration Group was expanded to include the Department of Economic and Social Affairs of the Secretariat, the United Nations Development Programme, the United Nations Population Fund and the World Bank. The Group's terms of reference were updated, and the Group was renamed the Global Migration Group (GMG). The Geneva Migration Group had been established in April 2003 by the heads of the International Labour Organization (ILO), the International Organization for Migration, the Office of the United Nations High Commissioner for Refugees, the United Nations Conference on Trade and Development and the United Nations Office on Drugs and Crime. GMG is developing a programme of work to focus its attention on priority migration issues that would benefit from more vigorous inter-agency consultation and collaboration.

20. In March 2006, the Governing Body of ILO authorized the Director-General to publish the text of the Multilateral Framework on Labour Migration adopted by the Tripartite Meeting of Experts that met in October/November 2005. These non-binding principles and guidelines for a rights-based approach to labour migration should provide important guidance to Governments and employers' and workers' organizations and enhance the protection of migrants all over the world.[1]

21. Finally, on 1 July 2006, a series of amendments to the maritime conventions[2] came into force which should enhance the protection of migrants at sea. Ships have long had a duty to rescue persons at risk at sea. However, those fulfilling this obligation have often faced problems as States have sometimes refused to authorize migrants and refugees rescued at sea, in particular undocumented persons, to disembark. This has often placed shipowners and companies in a very difficult situation, and has at times been seen to threaten the humanitarian tradition to assist persons at peril at sea.

22. In recognition of the seriousness of this issue, the States parties to the relevant international maritime conventions adopted a number of amendments to ensure that the obligation of the ship's captain to render assistance is complemented by a corresponding obligation of States to cooperate in rescue situations. These amendments should lift from the captain the sole responsibility for the care of survivors, allowing persons rescued at sea in such circumstances to be promptly taken to a safe place.

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[1] Available at: http://www.ilo.org/public/english/protection/migrant/download/tmmflm-en.pdf.

[2] The 1974 International Convention for the Safety of Life at Sea (the SOLAS Convention) and the 1979 International Convention on Maritime Search and Rescue (the SAR Convention). See press release by the International Maritime Organization at http://www.imo.org/home.asp.

23. The Special Rapporteur has been seriously concerned about the alarming number of reports received in the course of 2006 concerning migrants who lose their lives at sea, in particular in the Mediterranean region, and warmly welcomes the entry into force of these amendments, which he hopes will grant greater protection for persons who out of great desperation risk their lives at sea.

V. Observations on the High-level Dialogue on International Migration and Development

24. The High-level Dialogue is a unique and important opportunity to discuss some of the multiple issues raised by international migration and to recognize the many positive aspects of migration for the individual migrants and their families, for countries of origin and for countries of destination.

25. In its resolution 60/227 on international migration and development, the General Assembly set out the main themes to be discussed during the Dialogue. These include: the effects of international migration on economic and social development; the multidimensional aspects of international migration and development, including remittances; promoting and building partnerships and capacity-building and sharing best practices at all levels, including the bilateral and regional levels; and measures to ensure respect for and protection of the human rights of all migrants.

26. The singling out by the General Assembly of the protection of the human rights of migrants as one of the principle themes of the discussions on the issue of international migration and development is an important decision on the part of that body. Indeed, in the last few years, there has been a growing awareness on the part of a number of international actors of migrants' positive contribution to development. Attention often focuses on issues such as remittances and other financial issues linked to migration and the transfer of migrants' knowledge and skills to home countries, among others. However, though attention to these, usually positive aspects of migration is welcome and has the potential to counter some of the many negative myths and perceptions relating to the phenomenon, such discussions can sometimes give the impression that they do not sufficiently take into account the human dimension that is at the core of the migration experience.

27. The General Assembly has recognized that migrants are a particularly vulnerable group. Indeed, in the preamble to its resolution 60/169 on the protection of migrants, the Assembly listed many of the underlying causes for this vulnerability:

> "*Aware* of the increasing number of migrants worldwide, and bearing in mind the situation of vulnerability in which migrants and their families frequently find themselves, owing, inter alia, to their absence from their States of origin and to the difficulties they encounter because of discrimination, differences of language, custom and culture, as well as the economic and social difficulties and obstacles to the return to their States of origin, of migrants, especially those who are non-documented or in an irregular migratory situation,"

28. Discussion of any aspect of migration should always bear in mind the degree of migrants' vulnerability. A clear illustration of this vulnerability is the extent to

which, in many countries, migrants and other non-nationals in administrative or immigration detention have only limited rights. This was pointed out by the United Nations High Commissioner for Human Rights in her remarks during the high-level panel convened in preparation for the High-Level Dialogue.[3] In numerous countries, migrants, often including unaccompanied and other children, can be held, sometimes for prolonged periods, in administrative detention without the State being obliged to present reasonable evidence that the person might escape or not comply with expulsion orders. The migrants have limited rights to challenge the legality of the detentions, which are sometimes subject to review procedures that are often not carried out by courts or judicial organs. This limitation of their right to liberty is considered as normal and routine, not as a measure of last resort, and is rarely the subject of debate. The result is that, in a number of countries, migrants in immigration detention may have more limited rights than persons facing criminal charges.

29. The discussion at the High-level Dialogue can be the occasion to confront the "deficit" of multiple rights — economic, social and cultural as well as civil and political, and the right to development — that is often at the basis of migration itself and which can accompany migrants throughout the whole of the migration process. It can begin with violations of their rights in their countries of origin, be they economic, social and cultural or civil and political rights; by abuse and violations in countries of transit, suffered in particular by irregular migrants who can be victims of violations by authorities enforcing border controls, or even of abuses such as extortion by such authorities; and finally in the countries of destination where migrants often encounter exploitative and abusive working conditions and discrimination.

30. To a certain extent this rights deficit can persist at the international level, as evidenced by attempts by some countries to limit the application of fundamental guarantees to migrants and the extreme reluctance expressed by many States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[4] The relatively slow rate of ratification is also reflected with respect to the ILO conventions that directly deal with migration[5] and of the European Convention on the Legal Status of Migrant Workers.[6]

31. In this context, it is important to recall that most of the principles contained in these instruments are also contained in a number of different complementary international instruments that have been widely ratified. Under those latter instruments, as a general rule, there can be no discrimination in the guarantee of the fundamental rights. A number of principles of customary law can also, of course, be applicable to the situation of migrants. States are therefore under the obligation to protect all migrants present in their territory from violations of their fundamental rights.

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[3] See http://www.unhchr.ch/huricane/huricane.nsf/view01/A2E8520F882D1F16C12571A2003514067opendocument.

[4] The Convention had been ratified by 34 States as of 17 July 2006.

[5] The Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) have relatively few ratifications (Convention No. 97 has 45 ratifications and No. 143 only 19). In 1999 ILO carried out a General Survey on the question of ratification. See http://www.migrantsrights.org/ILO_report101199.htm.

[6] The European Convention on the Legal Status of Migrant Workers has been ratified/acceded to by 9 of the 46 member States of the Council of Europe.

32. In spite of this rights deficit and their great vulnerability, migrants have come to play an important and growing part in international development. The High-Level Dialogue and the increased interest paid by numerous international bodies to this theme are evidence of this. However, the growth of interest in the economic and developmental aspects of migration must be linked to greater protection of migrants' rights and to a genuine effort to eliminate situations that render them vulnerable to abuse and a litany of human rights violations. In a number of documents and papers that have been presented in preparation for the Dialogue, it has been argued that the protection of the rights of migrants makes economic sense and that true protection would only serve to maximize development.[7] Though the Special Rapporteur agrees with this analysis, he would like to underscore that even if economic advantage was not proved or not true, any discussion on migration must be based on the protection of migrants. Migration is essentially a human experience, and though the examination of the issue may greatly benefit from analyses from an economic or more general perspective, action in this field can never be carried out without focusing on the individuals involved.

A. Some issues addressed by the mandate of the Special Rapporteur on the human rights of migrants

33. The mandate of the Special Rapporteur on the human rights of migrants has often addressed the economic, social and developmental implications of migration. The previous Special Rapporteur repeatedly noted that social and economic factors are one of the root causes of migration[8] and identified five main factors that can lead people to emigrate: social and economic exclusion, the effects of widespread warfare, the demand for migrants in the receiving countries, the attraction that those countries exert, and natural disasters.[9]

34. Social, economic and cultural factors are often at the root of the special vulnerability of certain categories of migrants such as irregular migrants, women and children.

35. Irregular migrants are particularly vulnerable to organized crime networks that often take advantage of social and economic factors such as the lack of opportunities in countries of origin to create a relationship of dependence, often leading to high-risk situations such as crossing of borders in hazardous conditions, or extreme exploitation such as forced labour and/or trafficking.[10] This vulnerability of irregular migrants can also lead to their exploitation by unscrupulous employers and contractors in countries of employment.[11] The Special Rapporteur considers it important to adopt a broader perspective regarding irregular migration, one that

[7] The Secretary-General stresses in his report that "the benefits of international migration, not only for migrants themselves, but equally for receiving societies, are contingent on the protection of migrant rights" (A/60/871, para. 66); see also, for example, some of the contributions presented at the day of general discussion held by the Committee on the Rights of All Migrant Workers and Members of Their Families on 15 December 2005 on "protecting the rights of all migrant workers as a tool to enhance development".

[8] See E/CN.4/2000/82, para. 14; E/CN.4/2001/83, paras. 43-47; E/CN.4/2002/94; E/CN.4/2005/85, para. 74.

[9] See E/CN.4/2002/94, para. 24.

[10] See E/CN.4/2001/83, para. 53.

[11] See ibid., para 54.

includes protection strategies for those who migrate because of serious socioeconomic and developmental failures, including in their countries of origin.[12]

36. A growing proportion of migrants are now women,[13] and a gender perspective is therefore now essential to understanding both the causes and the impact of international migration and many of the issues linked to that theme. There is increasing recognition that discrimination, extreme gender inequality and abuses of social and economic, as well as civil and political rights are central factors in the decision to emigrate, and that this is especially true in the case of trafficking and smuggling of persons. When women find themselves in social circumstances that make it difficult for them to find paid work, they can become easy prey for organized crime groups, and can find themselves victims of trafficking.[14]

37. Factors at work in the feminization of migration can include: family reunification; inequities in the countries of origin in respect of the employment and income levels women can aspire to; and women's entry into the workforce in host countries, which means that migrant women tend to enter sectors such as domestic service, care of the elderly and other unskilled employment.

38. It has frequently been highlighted that owing to their double marginalization as women and as migrants, women migrants may easily find themselves in situations in which they are vulnerable to exploitation, violence and abuse, both at home and at work.[15] Domestic migrant workers, who in the great majority are women, are among the most vulnerable to numerous forms of abuse including restriction on their movements, extremely long working hours, low wages, illegal deductions from their wages and forms of debt bondage, and their situation has often been the object of particular attention for the mandate of the Special Rapporteur.[16] These workers often receive little protection from the law and in certain cases their situation can be considered tantamount to trafficking.

39. Child migrants are another category of migrants who are particularly affected by social, economic and developmental factors. Many families in countries of origin feel forced to send their children abroad to study or work owing to the lack of opportunities in those countries and in some cases to the many advantages offered to heads of household by agencies. Additionally, existing limitations on family reunification can lead parents to take desperate measures, such as resorting to smugglers, in order to be reunited with their children. In numerous cases, these minors are abandoned by agents in transit countries or the host country after the families have paid large sums of money. In other cases, they are detained for prolonged periods, expelled or deported by authorities in receiving and transit countries, many of which do not have adequate protection procedures in place that take into account minors' unique situation of vulnerability. These minors run the risk of being subjected to very serious abuses, including sexual abuse, degrading and slave labour, and finding themselves in situations of trafficking.[17]

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[12] See E/CN.4/2004/76/Add.3, para. 75.

[13] See Report of the Global Commission on International Migration, *Migration in an Interconnected World: New directions for action*, Global Commission on International Migration 2005, paras. 19 and 20, at: http://www.gcim.org/attachements/gcim-complete-report-2005.pdf.

[14] See E/CN.4/2005/85, para. 37.

[15] See E/CN.4/2000/82, para. 56.

[16] See E/CN.4/2004/76 and E/CN.4/2006/73/Add.1.

[17] See E/CN.4/2006/73, para. 71. See also E/CN.4/2001/83, para. 62.

40. Another important social and economic issue is the effect of migration on countries of origin, specifically the situation of family members left behind, in particular the elderly, young people and children. This theme is, of course, closely linked to both the situation of women and child migrants. Such situations are often the result of the failure to regularize the status of migrants or a lack of opportunities for family reunification in host countries.[18] In certain countries this phenomenon has taken on particular importance.[19]

41. Regarding countries of destination, the mandate of the Special Rapporteur has sometimes recommended that Governments undertake awareness campaigns on the situation of migrants and their contribution to the economy, culture and development.[20] More general recommendations have included the initiation of an intersectoral dialogue to find ways to develop specific policies to deal with migration issues and their implications for development, gender equity and the return and integration of repatriated migrants.[21]

42. In conclusion, social and economic factors are both a cause of migration and factors contributing to the abuse and human rights violations suffered by migrants.[22] However, in addition to increased vulnerability to abuse, social and economic factors can also determine not only the conditions of migration, but also the ultimate benefits, both personal for the migrant but also for society in general, that result from the migration process.

B. Consequences of the failure to acknowledge the demand for migrant labour

43. In his last report, the Special Rapporteur outlined a number of issues of particular concern to the mandate. In the context of the High-Level Dialogue, he would like to highlight the question of the failure by many countries to acknowledge the existence of demand for migrant labour and the negative consequences this has for migrants, either by encouraging the irregular migration and all the attendant human rights violations, or by fuelling anti-immigrant feeling among certain sectors of the population who perceive migrants as a burden rather than active and necessary members of their societies.

44. The existence of a demand for labour in receiving countries and the failure to acknowledge this demand has been noted in a number of recent reports and papers on international migration. In a 2004 report, ILO observed, with regard to the growth of the informal sector in developed economies, that "changing economic and demographic trends are combining to increase the effective demand for foreign labour in many industrialized countries" and that the "demand for migrant workers provides a significant impetus to labour flows and encourages the use of

[18] See E/CN.4/2001/83, para. 65.

[19] See for example recommendations made in reports on the visits to Ecuador (E/CN.4/2002/94/Add.1, paras. 77 and 78 and the Philippines (E/CN.4/2003/85/Add.4, para. 80).

[20] See E/CN.4/2004/76/Add.2, para. 86 (g).

[21] See E/CN.4/2000/82, paras. 91 (g) and (h).

[22] See for example reports on the visits to Ecuador (E/CN.4/2002/94/Add.1, para. 74), Mexico (E/CN.4/2003/85/Add.2, para. 49), Spain (E/CN.4/2004/76/Add.2, para. 78), Italy (E/CN.4/2005/85/Add.3, para. 80) and Peru (E/CN.4/2005/85/Add.4, para. 70).

undocumented migrants, at the expense of formal protections of workplace safety, health, minimum wage and other standards."[23]

45. IOM noted in its document of key messages for the High-Level Dialogue that "better mechanisms are needed to match supply and demand of labour globally".[24]

46. One of the main themes addressed by the report of the Global Commission on International Migration (GCIM) was that of the challenge of irregular migration. In its analysis of that theme, the Commission highlighted the question of the demand for irregular migrant labour, stating that "in some parts of the world certain sectors of the economy ... have come to rely to a significant extent on migrants with irregular status, who are prepared to work in difficult, dangerous and dirty jobs with little security and low wages".[25] The Commission went on to call on States to address this issue and recommended that "States should address the conditions that promote irregular migration by providing additional opportunities for regular migration and by taking action against employers who engage migrants with irregular status".[26]

47. Governments meeting in the context of the Berne Initiative also highlighted this issue as one of the "effective practices with regard to labour migrations", stating that regulated labour migration may help to "provide safety and security for migrants and regularize the inflow of migrant workers' remittances", and in addition can "contribute to the prevention of irregular migration."[27]

48. Finally, the Secretary-General in his report on international migration and development concluded: "Ultimately, laws and regulations that go against the forces of demand and supply will likely be ineffective in controlling the labour market. When there is a legitimate need for workers, providing a legal avenue for their employment and ensuring that their labour rights are protected produces the best results for all" (A/60/871, para. 262).

49. Indeed, existing demand for migrant labour, its insufficient acknowledgment by Governments and their consequent failure to provide legal avenues for migration are among the root causes of irregular migration, which is often a factor contributing to human rights violations and situations of abuse suffered by migrants. Extreme situations that have been reported in the context of irregular migration include:

(a) Situations of smuggling and trafficking of persons, in many cases involving particularly vulnerable persons such as women and children;

(b) Border crossing in hazardous conditions (often linked to smuggling), sometimes leading to loss of life;

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[23] ILO, *Towards a fair deal for migrant workers in the global economy*, International Labour Conference, 92nd Session, 2004, para. 140.

[24] IOM, *The High-Level Dialogue on International Migration and Development (HLD): Key IOM Messages* at http://www.un.int/iom/Key%20IOM%20Messages.pdf.

[25] Report of the Global Commission on International Migration, *Migration in an Interconnected World: New directions for action*, Global Commission on International Migration 2005, p. 36 at: http://www.gcim.org/attachements/gcim-complete-report-2005.pdf.

[26] Ibid., p. 80, recommendation 14.

[27] International Agenda for Migration Management, the Berne Initiative, International Organization for Migration (IOM) and the Federal Office for Migration (FOM) Switzerland, 2005, p. 41, at http://www.iom.int//DOCUMENTS/OFFICIALTXT/EN/IAMM_E.pdf.

(c) Abuse by public officials, including extortion, violation of the right to personal integrity and violation of the right to life;

(d) Violations of or restrictions to the right to freedom of movement and security, in particular when migrants are held in administrative detention where the conditions of detention are inadequate, including lack of protection for vulnerable persons such as unaccompanied children, refugees and victims of trafficking;

(e) Inadequate expulsion proceedings and processes, including being denied a fair hearing or the opportunity to recover wages owed or property before being expelled, as well being subjected to excessive use of force during expulsion;

(f) Various forms of abuse of economic, social and cultural rights committed by private individuals or companies such as extremely long working hours, payment of salaries well below minimum wages established by law, non-payment of wages or illegal deductions from wages, and harsh and hazardous working conditions, among others. In some cases, these situations are tantamount to trafficking or forced labour;

(g) Lack of access to very basic social services such as health care, even in emergencies, or education for children of irregular migrants.

50. The extreme exploitation often encountered by these workers minimizes their contribution to their families, and consequently to the development of their countries of origin. Additionally, the participation of these migrants in the irregular economy often means that they are placed outside the law and its protections and obligations, so that they do not or cannot pay taxes or contribute to social security and cannot complain in the face of abuse.

51. The perception by certain sectors of the population of host or receiving countries that migrants do not contribute to the societies in which they are living, but rather benefit from social services and other existing infrastructure, often to the disadvantage of the "native" population, fuels racism and anti-immigrant feeling. These seem often to be based on grave misconceptions regarding migrants' participation in and contribution to the economies of the countries in which they live.

52. As with the other issues linked to migration, detailed information on the existence of demand for migrant labour or the participation of migrant labour in the economies of receiving countries is either not available or not properly disseminated. This lack is particularly serious with respect to information on the participation of undocumented or irregular migrants in the economies of receiving countries.

53. The lack of comprehensive data and harmonized definitions in data collection in the field of migration has often been observed.[28] Recent documents that have analysed the phenomenon of migration, such as the Secretary-General's report or the Global Commission's reports, acknowledge the problem in the collection, analysis, sharing and dissemination of information and make proposals how to better address this issue. The creation of new institutions or structures or the amelioration of existing arrangements that have been proposed should, among other things, improve information-gathering, -sharing and -dissemination.

[28] See, for example, Recommendations on Statistics of International Migration Revision 1, Department of Economic and Social Affairs Statistics Division, Statistical Papers Series M, No. 58, Rev.1, 1998, pp. ____.

54. The Special Rapporteur believes that a greater understanding and acknowledgment of the need for migrant labour and of the many positive contributions made by migrants to the societies in which they live is key to reducing their vulnerability to many human rights violations. This information would also play a central role in the development of migration policies that correspond to the realities and needs of the countries concerned.

VI. Conclusions and recommendations

55. **Insufficient information and lack of awareness by many sectors of society of the realities of migration are important factors in the vulnerability of migrants to abuse. Of particular importance, both as a push factor for international migration and as an element in this vulnerability, is the issue of the demand for migrant labour and migrants' participation in the labour market of receiving countries.**

56. **The acknowledgement of the existence of this demand should begin with the collection and/or publication by Governments of data on the presence of migrant labour in their countries, by sector of the economy, over the past five years. This collection of data should be followed by the adoption of immigration policies which are consistent with receiving countries' real demand for migrant labour, which, with the opening of avenues for regular migration, should lead to a decrease in irregular migration. Finally, Governments should undertake public awareness campaigns regarding the need for migrant labour and the contributions made by migrants to their economies so as to better combat the racist feelings and anti-migrant arguments of certain sectors of their population.**

57. **The Special Rapporteur thus considers it of particular importance that better mechanisms be put in place for the collection, sharing and dissemination of information on migrants in general. In particular, as stated above, the collection of information on the existence of demand for migrant labour and the participation in the economy of irregular migrants should permit consistency and the harmonization of policies, and increase public awareness of the need for migrant labour and of migrants' contributions to the economies of the societies in which they live. This task could be accomplished through a number of different measures.**

58. **The numerous initiatives that have been taken in preparation for the High-Level Dialogue and discussions on what should follow from that event have resulted in a number of proposals, including the creation of an intergovernmental forum. Earlier in 2006, GMG was established by expanding the membership of the Geneva Migration Group to include a number of United Nations agencies which are involved with issues relevant to development. Should the General Assembly decide to create such a forum, both groups could be actors in better information-gathering and -sharing. It would be useful if information could be centralized and made accessible in one database which would include information disaggregated on the basis of gender, age, region, etc.**

59. **In conclusion, the Special Rapporteur would suggest that the General Assembly carefully consider this issue and adopt the necessary measures to**

ensure transparency regarding the existence of demand for migrant labour in the various receiving countries, with particular attention to irregular migration. Such measures should lead to a new standard for the gathering and disclosure of information and would be instrumental in reducing violations of the rights of migrants and inducing compliance with international human rights standards.